

REMARKS

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Claims 2, 28, 31, 35, 38, 40, 62, 64, 67, 69, and 73-78 are hereby canceled without prejudice, and claims 1, 3, 32, 57, and 58 are hereby amended. Claims 1, 3, 4, 9, 10, 14, 15, 17, 18, 20-26, 30, 32, 33, 36, 37, 39, 43, 44, 48, 49, 51, 52, 54-61, 65, 66, 68, 71, and 72 are now pending.

The objection to claims 35, 38, 40, 64, 67, and 69 under 37 CFR § 1.75(c) is rendered moot in view of the cancellation of the objected claims.

The rejection of claims 1-4, 9, 10, 14, 15, 17, 18, 20-28, 30-33, 35-40, 43, 44, 48, 49, 51, 52, 54-62, 64-69, and 71-78 under 35 U.S.C. § 112 (1st para.) for lack of enablement is respectfully traversed in view of the above amendments and the following remarks.

The U.S. Patent and Trademark Office (“USPTO”) has acknowledged that the specification is enabling for chimeric genes that (i) encode the hypersensitive response (“HR”) elicitors of *Erwinia chrysanthemi* HrpN (SEQ ID NO:1), *Erwinia amylovora* HrpN (SEQ ID NO:3), *Pseudomonas syringae* HrpZ (SEQ ID NO:5), and *Pseudomonas solanacearum* PopA (SEQ ID NO:7); (ii) are operably linked to the *gstI* promoter; and (iii) include a secretion signal sequence. Claim 1 has been amended to limit the encoded HR elicitor to the four HR elicitors listed above and to recite the presence of a (second) DNA molecule that encodes a secretion signal. Claim 1 was previously amended (*see* applicants’ Amendment, filed November 29, 2004) to limit the promoter of the claimed chimeric gene to the *gstI* promoter (i.e., “the promoter comprising nt 295-567 of SEQ ID NO:9”). While applicants respectfully disagree with the USPTO’s position regarding the necessity of the secretion signal to afford resistance (*see* page 29, line 29 to page 30, line 4, and page 38, line 5 to page 39, line 28 of the specification, indicating that plants transformed with constructs lacking the secretion signal were more resistant than wild type plants but less resistant than those transformed with constructs having the secretion signal), applicants have amended claim 1 to recite the secretion signal.

For the reasons noted above, applicants respectfully submit that the rejection under 35 U.S.C. § 112 (1st para.) for lack of enablement is improper and should be withdrawn.


The rejection of claims 1-4, 22-28, 30-33, 35-40, 56-62, 64-69, and 71-78 under 35 U.S.C. § 112 (1st para.) as lacking written descriptive support is rendered moot with respect to the canceled claims, and is otherwise traversed with respect to claim 1 (and claims dependent thereon) in view of the above amendments.

The rejection of claims 73-77 under 35 U.S.C. § 112 (2nd para.) for indefiniteness is rendered moot in view of the cancellation of the rejected claims.

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: September 1, 2005



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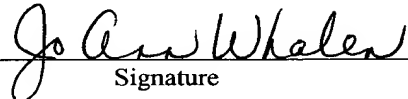
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